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No. 83-747

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Petitioner,

v.

PAUL D. JOHNSON, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF *AMICI CURIAE* OF THE COMMONWEALTH OF VIRGINIA AND THE STATE OF MARYLAND IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the builder of an interstate rapid transit system that purchases compensation benefits for injured laborers pursuant to its obligation under a federally approved interstate Compact to act as general contractor is entitled to the statutory immunity from suit granted to contractors by the Longshoremen's and Harbor Workers' Compensation Act, or whether, as held by the District of Columbia Circuit, injured employees may recover both compensation and damages from the builder.

2. Whether the builder forfeits its statutory immunity from suit simply because it initially purchased workers' compensation protection for all construction employees rather than first demand that contractors—many of whom were uninsurable—themselves obtain workers' compensation insurance.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

TABLE OF AUTHORITIES—Continued

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INTEREST OF *AMICI*

The Commonwealth of Virginia and the State of Maryland are signatories to the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966). *See* Ch. 2, 1966 Acts of Assembly, Va. Code Ann. § 56-529 (1981); Ch. 869, Acts of General Assembly 1965, Md. Code Ann. [Transportation] § 10-204 (1977). Virginia and Maryland assist in the financing of WMATA by contributing state funds for WMATA's op-

erating budget, from which WMATA pays damage awards. The decision below, which subjects WMATA to tort liability atop the workers' compensation awards WMATA has already paid, has a serious, adverse financial impact upon Virginia and Maryland. By denying WMATA any *quid pro quo* for its purchase of compensation, Virginia and Maryland will be saddled with damage awards as well as WMATA's compensation expenses. The decision below will also lead to an enormous increase in the litigation of injury claims arising out of the construction of the Metro by permitting each claimant to bring a damage suit after receiving compensation benefits. Therefore, in addition to the cost of defending and paying meritorious claims, Virginia and Maryland will be subjected to the cost of settling frivolous suits too costly to defend. Finally, the decision below will surely provide injured workers with greater total compensation and damage awards than these workers would receive as take-home pay if employed, thereby providing a disincentive for employees to return to work. Because of these adverse impacts upon the States' fisc, the decision below is of substantial interest to Virginia and Maryland.

Moreover, the decision below creates an anomaly in the law applicable to WMATA. The law of Virginia and Maryland clearly would provide a general contractor like WMATA with complete immunity from suit for all employment-related accidents. *See, e.g.*, Va. Code Ann. §§ 65.1-30 & 65.1-40 (1980); *Evans* v. *Newport News Shipbuilding & Dry Dock Co.*, 361 F.2d 364 (4th Cir. 1966); *Anderson* v. *Thorington Construction Co., Inc.*, 201 Va. 266, 110 S.E.2d 396 (1959), *appeal dismissed for want of a properly presented substantial federal question*, 363 U.S. 719 (1960); Md. Code Ann. art. 101, § 62 (Michie 1979); *State ex rel. Reynolds* v. *City of Baltimore*, 86 A.2d 618 (Md. 1952). The decision below subjects WMATA to different rules for Virginia and Maryland, on the one hand, and for the District of Columbia, on the

other. Virginia and Maryland therefore have an additional interest in assuring that the interstate agency to which they are partners is not subject to different rules in different courts.

ARGUMENT

1. By ruling that WMATA could be subjected to damage awards despite WMATA's payment of workers' compensation claims, the decision below subjects the Commonwealth of Virginia and the State of Maryland to substantial additional liability for injury claims arising out of the construction of the Metro. While WMATA's operating revenues are intended to be the principal source of its funds, Virginia and Maryland, along with the District of Columbia and federal government, compensate for any deficit with state funds. *E.g.*, 1982 Va. Acts ch. 684, Apr. 21, 1982 (approving over $40 million for FYs 1982-1984). These subsidies may exceed $200 million for 1984, aside from the effects of the decision below. Lynton, *Metro's Deficit: Relentless Problem*, Wash. Post, Apr. 17, 1983, at B1, B7. By opening WMATA up to thousands of suits still within the statute of limitations for past injuries and to an untold number of future suits, the decision below will plainly have an adverse impact upon the State treasuries.

The decision of the Court of Appeals also threatens to undermine a long-standing, necessary, and cost-efficient means of providing workers' compensation coverage for Metro construction employees. Now universally employed in large construction projects, wrap-up programs provide a myriad of benefits that would otherwise be lost if each individual entity were forced to obtain its own compensation coverage, assuming that each could do so. *See* Pet. 23-25 & nn. 26 & 27 (describing benefits of wrap-up programs). The wrap-up insurance program adopted by WMATA provides continuous workers' compensation coverage for the employees of all of WMATA's contractors, subcontractors, and sub-subcontractors. At the same time,

the WMATA wrap-up program provides these benefits at a far lower cost than would be borne by the individual entities considered together. By denying WMATA immunity from suit, the Court of Appeals has eliminated those cost savings and has thrown into question the integrity of the entire wrap-up program. The Court of Appeals' belittlement of these benefits of WMATA's wrap-up program, *see* Pet. App. 55a, displays a rather cavalier attitude towards the States' fisc.

2. In addition to the importance of resolving the uncertainty created by the Court of Appeals' decision, further review is necessary here because the decision below misinterprets the LHWCA. Under the WMATA Interstate Compact, WMATA is the general contractor for the Metro, as every court below ruled. Section 904(a) plainly requires a "contractor," rather than a "subcontractor," to purchase workers' compensation insurance and to make the statutory compensation payments unless a subcontractor "has secured" compensation. *See* Pet. 3. The syntax Congress employed is significant because it assures that employees will be afforded continuous coverage. No language in the LHWCA requires a contractor to follow the two-step process outlined by the Court of Appeals, and that process, by permitting gaps in coverage to occur, is inconsistent with the plain language of Section 904(a).

Having fulfilled the requirements of Section 904(a), WMATA is entitled to the immunity from employee suits recognized by Section 905(a). Congress' failure to repeat the term "contractor" in Section 905(a) is of no consequence. Because the second sentence of Section 904(a) requires a contractor to step into the shoes of a subcontractor-employer with respect to the obligations imposed by the LHWCA, the most natural reading of Sections 904(a) and 905(a) would also afford that contractor the immunity Section 905(a) would otherwise provide the subcontractor-employer. The contrary conclu-

sion would assume that Congress was unaware of the shift from a subcontractor-employer to a contractor of the obligations imposed by Section 904(a). That conclusion would also assume that Congress intended to deny contractors, alone of all the parties required by the LHWCA to obtain workers' compensation coverage, the immunity from suit that had been a hallmark of every workers' compensation program ever adopted. Because nothing in the language of Sections 904(a) and 905(a) suggests any such result, the most straightforward interpretation of these sections compels the conclusion that WMATA is entitled to immunity.

Because there is nothing in the legislative history of the LHWCA or the District of Columbia Workmen's Compensation Act suggesting that Congress intended contractors to pursue the two-step process described by the Court of Appeals, the plain meaning of Section 904(a) is controlling. *See, e.g., Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Furthermore, none of the lower court decisions relied upon by the Court of Appeals, *see* Pet. App. 52a-54a, supports the result below. Those cases fit into one of two categories: either both the subcontractor and contractor had purchased workers' compensation insurance, or the subcontractor alone had done so. In the first situation, the contractor would not be obligated to purchase workers' compensation insurance, because the subcontractor "ha[d] secured" compensation, and therefore the contractor would not be entitled to immunity. In the other situation, the contractor would not be entitled to immunity simply because it had not secured any workers' compensation insurance. This case is materially different because, as every court below found, WMATA alone purchased workers' compensation insurance. Hence, the lower federal court decisions upon which the Court of Appeals relied are inapposite.

Finally, denying WMATA immunity from suit leads to results that Congress could not have intended. First,

by permitting injured workers to sue WMATA as well as recover compensation benefits the decision below eliminates any *quid pro quo* WMATA would otherwise receive from purchasing compensation insurance. Second, the decision below resurrects the tort system that the LHWCA was designed to replace and will lead to an enormous increase in the litigation of employment-related injuries. And third, denying WMATA, the sole compensation provider, immunity will virtually guarantee that a disabled employee will receive compensation benefits that exceed the take-home pay he earned while employed. That result will not only encourage the filing of frivolous claims, in the hope of obtaining a favorable settlement, but will give workers a disincentive to return to work. To be sure, that disincentive already exists to some extent because of the tax-free nature of LHWCA benefits and the availability of collateral benefits from other sources which are not offset by LHWCA benefits. *See* Report by the Comptroller General of the United States, General Accounting Office, *Longshoremen's and Harbor Workers' Compensation Act Needs Amending* 13-17, 26 (Apr. 1982). But the decision below will exacerbate that problem.

3. The court below also gave especial weight to the principle that the LHWCA ought to be liberally construed to effectuate its remedial purposes, ruling that the "overriding purpose" of the Act was to provide injured workers with *both* compensation benefits and the right to a third-party suit in damages. *See* Pet. App. 51a; *id.* at 51a-56a. But the only authority the court cited in support of that proposition was the court's earlier decision in *Potomac Electric Power Co.* v. *Wynn*, 343 F.2d 295, 296 (D.C. Cir. 1965), which this Court had specifically overruled in *Rodriguez* v. *Compass Shipping Co.*, 451 U.S. 596, 614-617 (1981). Moreover, the District of Columbia Circuit's decision in *Wynn* antedated the 1972 Congressional amendments to the LHWCA, in which Congress made clear its intent "to minimize the need for

litigation as a means of providing compensation for injured workers." *Rodriguez*, 451 U.S. at 616. For both reasons, the Court of Appeals' reliance upon *Wynn* cannot be justified.

There is also no other reason for invoking the doctrine of liberal construction in this case. The primary purpose of the LHWCA is to afford injured workers absolute but limited compensation in exchange for their relinquishment of damage suits. *See, e.g., Morrison-Knudsen Construction Co.* v. *Director, OWCP*, 103 S. Ct. 2045, 2052 (1983); *Potomac Electric Power Co.* v. *Director, OWCP*, 449 U.S. 268, 281-282 (1980). Hence, the policy of liberal construction only justifies resolving doubtful cases in favor of an injured employee where the alternative is to leave him without any compensation *and* any tort suit at all. Where, as here, the employee has already recovered a compensation award, and the dispute is over the question of whether the employee may also obtain a damage award from the party who has already provided that compensation, the policy of liberal construction is inapplicable, since it is not the purpose of the LHWCA to burden a general contractor like WMATA with *both* compensation and tort liability. *Morrison-Knudsen*, 103 S. Ct. at 2052; *Potomac Electric Power Co.* v. *Director, OWCP*, 449 U.S. at 281-282 & n.24.

The only reason given by the Court of Appeals for liberally construing the LHWCA was to permit employees more easily to identify third-party defendants. *See* Pet. App. 56a. But that rationale is unavailing since the policy of liberal construction does not purport to allocate responsibility among potential third-party defendants or to make lawyering simpler. Hence, the Court of Appeals' concern with the easy availability of employees' third-party suits does not justify the result below.

CONCLUSION

For the foregoing reasons, and the reasons given in the Petition, this Court should reverse the judgment below. The decision below of the United States Court of Appeals for the District of Columbia Circuit is also so plainly in error as to warrant summary reversal.

Respectfully submitted,

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